

#24

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

United States Patent and Trademark Office  
Board of Patent Appeals and Interferences  
600 Dulany Street  
Madison /Building East  
9<sup>th</sup> Floor  
Alexandria, VA 22314

RECEIVED  
2004 NOV 10 AM 10:45  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

**Attention: Board of Patent Appeals and Interference**

In Re: Interference No. 101,833  
(U.S. Patent 4,587,258)  
Parties to Interference: Schering Corporation  
and Hoechst A.G. (now Aventis)

**Petition for Access to Sealed Documents in Settlement of Patent Interference Pursuant to  
Board of Patent Appeals and Interferences Rule 41.205 (d)**

1. I, Edward H. Mazer, have been employed continuously by Schering-Plough Corporation since 1986 in various capacities within the Patent Department. My current position is Senior Director – Patents.

2. Schering Corporation is a wholly-owned subsidiary of Schering-Plough Corporation. I am authorized by Schering Corporation to file this Petition.

3. Schering Corporation, the owner of U.S. Patent No. 4,587,258, was a party to an interference, Interference No. 101,833, with a pending U.S. patent application, U.S. Serial No. 799,284, filed November 19, 1985 which was assigned to Hoechst A.G.

4. Schering Corporation was represented in this Interference proceeding by an outside patent law firm, Kenyon & Kenyon.

5. On September 30, 1988 Douglas Brace, Esq. a member of Kenyon & Kenyon, sent a letter, attached hereto as Exhibit I, to the Commissioner of Patents and Trademarks relating to the termination of the above-noted interference. Enclosed with said letter were true copies of four documents briefly described in said letter. This letter stipulated that these documents, transmitted in a sealed envelope, were to be kept separate from the file of the Interference and that they be made available only to Government agencies upon written request,

10231980  
190365  
00000002  
11/19/2004 NR00CHA1  
01 FC:1460 130.00 DA

and not to any other person or party except upon a petition showing good cause justifying access to such agreements.

6. A Canadian patent generally corresponding to the aforementioned '258 patent, Canadian Patent No. 1,341,206, also assigned to Schering Corporation, is the subject of patent infringement litigation.

7. During these Canadian patent infringement proceedings, one of the Defendants inquired about the terms for settlement of the interference, including the four documents transmitted in the sealed envelope.

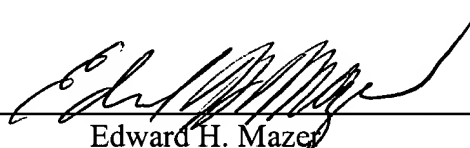
8. Based upon information and belief, Schering's file for this interference proceeding was sent to an Archive facility prior to March 1997. This Archive facility was destroyed in a fire in or about March 1997.

9. Recently, I contacted Kenyon & Kenyon to determine if they still retained copies of the four documents transmitted to the Commissioner of Patents and Trademarks in the aforementioned sealed envelope. I was informed that they no longer retained copies of these documents.

10. Therefore, the Patentee, Schering Corporation respectfully requests that access to the sealed documents be granted to a representative of Betty Byrd, Inc. to make copies of same on our behalf. The Patent requests that Carol Potts of Betty Byrd, Inc. (703.415.1224) be notified when this Petition has been granted.

Further deponent sayeth not.

Nov. 8, 2004  
Date

  
Edward H. Mazer  
Attorney for Patentee  
Registration No. 27,573

Encl.

County of Union }

State of New Jersey }

Sworn to and subscribed before me by Edward H. Mazer on 8<sup>th</sup> day  
of November, 2004.




Ashly M. Armstrong  
NOTARY PUBLIC  
**ASHLY M. ARMSTRONG**  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 3/26/2008

Encl.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>RECEIVED</b> <b>FEE TRANSMITTAL</b> <b>for FY 2005</b> Effective 10/11/2004. Patent fees are subject to annual revision.		<b>Complete if Known</b>	
Applicant claims small entity status. See 37 CFR 1.27		Application Number	US Pat. No. 4,587,258
		Filing Date	10/23/1980
		First Named Inventor	Bernard R. Neustadt et al.
		Examiner Name	
		Art Unit	
TOTAL AMOUNT OF PAYMENT (\$)		130.00	
		Attorney Docket No.	2328 (2219B)

METHOD OF PAYMENT (check all that apply)				FEE CALCULATION (continued)																																																																																																																							
<input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money Order <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account: Deposit Account Number: 19-0365 Deposit Account Name: Schering-Plough Corporation				<b>3. ADDITIONAL FEES</b> Large Entity   Small Entity																																																																																																																							
The Director is authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input checked="" type="checkbox"/> Charge any additional fee(s) or any underpayment of fee(s) <input checked="" type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.				<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">FEE Code (\$)</th> <th style="width: 10%;">FEE Code (\$)</th> <th style="width: 60%;">Fee Description</th> <th style="width: 20%;">Fee Paid</th> </tr> </thead> <tbody> <tr><td>1051 130</td><td>2051 65</td><td>Surcharge - late filing fee or oath</td><td></td></tr> <tr><td>1052 50</td><td>2052 25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr> <tr><td>1053 130</td><td>1053 130</td><td>Non-English specification</td><td></td></tr> <tr><td>1812 2,520</td><td>1812 2,520</td><td>For filing a request for ex parte reexamination</td><td></td></tr> <tr><td>1804 920*</td><td>1804 920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr> <tr><td>1805 1,840*</td><td>1805 1,840*</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr> <tr><td>1251 110</td><td>2251 55</td><td>Extension for reply within first month</td><td></td></tr> <tr><td>1252 430</td><td>2252 215</td><td>Extension for reply within second month</td><td></td></tr> <tr><td>1253 980</td><td>2253 490</td><td>Extension for reply within third month</td><td></td></tr> <tr><td>1254 1,530</td><td>2254 765</td><td>Extension for reply within fourth month</td><td></td></tr> <tr><td>1255 2,080</td><td>2255 1,040</td><td>Extension for reply within fifth month</td><td></td></tr> <tr><td>1401 340</td><td>2401 170</td><td>Notice of Appeal</td><td></td></tr> <tr><td>1402 340</td><td>2402 170</td><td>Filing a brief in support of an appeal</td><td></td></tr> <tr><td>1403 300</td><td>2403 150</td><td>Request for oral hearing</td><td></td></tr> <tr><td>1451 1,510</td><td>1451 1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr> <tr><td>1452 110</td><td>2452 55</td><td>Petition to revive - unavoidable</td><td></td></tr> <tr><td>1453 1,330</td><td>2453 665</td><td>Petition to revive - unintentional</td><td></td></tr> <tr><td>1501 1,370</td><td>2501 685</td><td>Utility issue fee (or reissue)</td><td></td></tr> <tr><td>1502 490</td><td>2502 245</td><td>Design issue fee</td><td></td></tr> <tr><td>1503 660</td><td>2503 330</td><td>Plant issue fee</td><td></td></tr> <tr><td>1460 130</td><td>1460 130</td><td>Petitions to the Commissioner</td><td>130.00</td></tr> <tr><td>1807 50</td><td>1807 50</td><td>Processing fee under 37 CFR 1.17(q)</td><td></td></tr> <tr><td>1806 180</td><td>1806 180</td><td>Submission of Information Disclosure Stmt</td><td></td></tr> <tr><td>8021 40</td><td>8021 40</td><td>Recording each patent assignment per property (times number of properties)</td><td></td></tr> <tr><td>1809 790</td><td>2809 395</td><td>Filing a submission after final rejection (37 CFR 1.129(a))</td><td></td></tr> <tr><td>1810 790</td><td>2810 395</td><td>For each additional invention to be examined (37 CFR 1.129(b))</td><td></td></tr> <tr><td>1801 790</td><td>2801 395</td><td>Request for Continued Examination (RCE)</td><td></td></tr> <tr><td>1802 900</td><td>1802 900</td><td>Request for expedited examination of a design application</td><td></td></tr> </tbody> </table>				FEE Code (\$)	FEE Code (\$)	Fee Description	Fee Paid	1051 130	2051 65	Surcharge - late filing fee or oath		1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet		1053 130	1053 130	Non-English specification		1812 2,520	1812 2,520	For filing a request for ex parte reexamination		1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action		1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action		1251 110	2251 55	Extension for reply within first month		1252 430	2252 215	Extension for reply within second month		1253 980	2253 490	Extension for reply within third month		1254 1,530	2254 765	Extension for reply within fourth month		1255 2,080	2255 1,040	Extension for reply within fifth month		1401 340	2401 170	Notice of Appeal		1402 340	2402 170	Filing a brief in support of an appeal		1403 300	2403 150	Request for oral hearing		1451 1,510	1451 1,510	Petition to institute a public use proceeding		1452 110	2452 55	Petition to revive - unavoidable		1453 1,330	2453 665	Petition to revive - unintentional		1501 1,370	2501 685	Utility issue fee (or reissue)		1502 490	2502 245	Design issue fee		1503 660	2503 330	Plant issue fee		1460 130	1460 130	Petitions to the Commissioner	130.00	1807 50	1807 50	Processing fee under 37 CFR 1.17(q)		1806 180	1806 180	Submission of Information Disclosure Stmt		8021 40	8021 40	Recording each patent assignment per property (times number of properties)		1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))		1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))		1801 790	2801 395	Request for Continued Examination (RCE)		1802 900	1802 900	Request for expedited examination of a design application	
FEE Code (\$)	FEE Code (\$)	Fee Description	Fee Paid																																																																																																																								
1051 130	2051 65	Surcharge - late filing fee or oath																																																																																																																									
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet																																																																																																																									
1053 130	1053 130	Non-English specification																																																																																																																									
1812 2,520	1812 2,520	For filing a request for ex parte reexamination																																																																																																																									
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action																																																																																																																									
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action																																																																																																																									
1251 110	2251 55	Extension for reply within first month																																																																																																																									
1252 430	2252 215	Extension for reply within second month																																																																																																																									
1253 980	2253 490	Extension for reply within third month																																																																																																																									
1254 1,530	2254 765	Extension for reply within fourth month																																																																																																																									
1255 2,080	2255 1,040	Extension for reply within fifth month																																																																																																																									
1401 340	2401 170	Notice of Appeal																																																																																																																									
1402 340	2402 170	Filing a brief in support of an appeal																																																																																																																									
1403 300	2403 150	Request for oral hearing																																																																																																																									
1451 1,510	1451 1,510	Petition to institute a public use proceeding																																																																																																																									
1452 110	2452 55	Petition to revive - unavoidable																																																																																																																									
1453 1,330	2453 665	Petition to revive - unintentional																																																																																																																									
1501 1,370	2501 685	Utility issue fee (or reissue)																																																																																																																									
1502 490	2502 245	Design issue fee																																																																																																																									
1503 660	2503 330	Plant issue fee																																																																																																																									
1460 130	1460 130	Petitions to the Commissioner	130.00																																																																																																																								
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)																																																																																																																									
1806 180	1806 180	Submission of Information Disclosure Stmt																																																																																																																									
8021 40	8021 40	Recording each patent assignment per property (times number of properties)																																																																																																																									
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))																																																																																																																									
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))																																																																																																																									
1801 790	2801 395	Request for Continued Examination (RCE)																																																																																																																									
1802 900	1802 900	Request for expedited examination of a design application																																																																																																																									
<b>1. BASIC FILING FEE</b> Large Entity   Small Entity <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Fee Code (\$)</th> <th style="width: 10%;">Fee Code (\$)</th> <th style="width: 60%;">Fee Description</th> <th style="width: 20%;">Fee Paid</th> </tr> </thead> <tbody> <tr><td>1001 790</td><td>2001 395</td><td>Utility filing fee</td><td></td></tr> <tr><td>1002 350</td><td>2002 175</td><td>Design filing fee</td><td></td></tr> <tr><td>1003 550</td><td>2003 275</td><td>Plant filing fee</td><td></td></tr> <tr><td>1004 790</td><td>2004 395</td><td>Reissue filing fee</td><td></td></tr> <tr><td>1005 160</td><td>2005 80</td><td>Provisional filing fee</td><td></td></tr> <tr><td colspan="3" style="text-align: right;">SUBTOTAL(I) (\$)</td><td>0</td></tr> </tbody> </table>				Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid	1001 790	2001 395	Utility filing fee		1002 350	2002 175	Design filing fee		1003 550	2003 275	Plant filing fee		1004 790	2004 395	Reissue filing fee		1005 160	2005 80	Provisional filing fee		SUBTOTAL(I) (\$)			0																																																																																												
Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid																																																																																																																								
1001 790	2001 395	Utility filing fee																																																																																																																									
1002 350	2002 175	Design filing fee																																																																																																																									
1003 550	2003 275	Plant filing fee																																																																																																																									
1004 790	2004 395	Reissue filing fee																																																																																																																									
1005 160	2005 80	Provisional filing fee																																																																																																																									
SUBTOTAL(I) (\$)			0																																																																																																																								
<b>2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE</b> Fee from Extra Claims below   Fee Paid Total Claims: 20" =   X Independent Claims: 3- =   X Multiple Dependent: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Large Entity Fee Code (\$)</th> <th style="width: 10%;">Small Entity Fee Code (\$)</th> <th style="width: 60%;">Fee Description</th> <th style="width: 20%;">Fee Paid</th> </tr> </thead> <tbody> <tr><td>1202 18</td><td>2202 9</td><td>Claims in excess of 20</td><td></td></tr> <tr><td>1201 88</td><td>2201 44</td><td>Independent claims in excess of 3</td><td></td></tr> <tr><td>1203 300</td><td>2203 150</td><td>Multiple dependent claim, if not paid</td><td></td></tr> <tr><td>1204 88</td><td>2204 44</td><td>Reissue independent claims over original patent</td><td></td></tr> <tr><td>1205 18</td><td>2205 9**</td><td>Reissue claims in excess of 20 and over original patent</td><td></td></tr> <tr><td colspan="3" style="text-align: right;">SUBTOTAL (\$)</td><td>0</td></tr> </tbody> </table>				Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid	1202 18	2202 9	Claims in excess of 20		1201 88	2201 44	Independent claims in excess of 3		1203 300	2203 150	Multiple dependent claim, if not paid		1204 88	2204 44	Reissue independent claims over original patent		1205 18	2205 9**	Reissue claims in excess of 20 and over original patent		SUBTOTAL (\$)			0																																																																																												
Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid																																																																																																																								
1202 18	2202 9	Claims in excess of 20																																																																																																																									
1201 88	2201 44	Independent claims in excess of 3																																																																																																																									
1203 300	2203 150	Multiple dependent claim, if not paid																																																																																																																									
1204 88	2204 44	Reissue independent claims over original patent																																																																																																																									
1205 18	2205 9**	Reissue claims in excess of 20 and over original patent																																																																																																																									
SUBTOTAL (\$)			0																																																																																																																								
*or number previously paid, if greater; For Reissues, see above				Other fee (specify) _____ • Reduced by Basic Filing Fee Paid <b>SUBTOTAL (\$)</b> <b>130.00</b>																																																																																																																							

SUBMITTED BY		(Complete (applicable))	
Name (Print/Type)	Edward H. Mazer	Registration No. (Attorney Agent)	27,573
Signature		Telephone	908-298-5077
		Date	11/8/2004

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.